SALES—LAW GOVERNING VALIDITY—ORDERS TAKEN SUBJECT TO APPROVAL.—Plaintiff, a wholesale liquor dealer in Minnesota, sent its agent into Iowa to solicit orders. The agent secured from defendant an order, subject to plaintiff's approval. The order was approved, the liquor shipped and received. Plaintiff brought suit for the price, and defendant claimed the sale was made with intent of resale in Iowa contrary to the Statutes of Iowa and hence was void. *Held,* that the contract was made in Minnesota, where it became effective by plaintiff's approval, was governed by the laws of that state, and plaintiff should recover. *P. J. Bowlin Liquor Co.* v. *Brandenburg* (1906), — Ia. —, 106 N. W. Rep. 497.

The case challenges attention as seeming to uphold a contract entered into by the citizens of different states, the performance of which was forbidden in the state where performance must take place. The general principle upon which the case was decided, viz., that the law of the place where the last act necessary to make the contract effective governs as to its validity, is apparently well settled. PAGE ON CONTRACTS, Vol. III, § 1718; *Sachs* v. *Garner,* 111 Ia. 424, 82 N. W. 1007; *Wind* v. *Iler,* 93 Ia. 316, 61 N. W. 1001; *Ivey* v. *Land Co.,* 115 Cal. 196, 46 Pac. 926; *Wood* v. *Ins. Co.,* 8 Wash. 427, 36 Pac. 267; *Seaman* v. *Knapp etc. Co.,* 89 Wis. 171, 61 N. W. 757; *Fidelity Mut. Life Ass.* v. *Harris,* 94 Tex. 25, 57 S. W. 635; *Johnson etc. Bank* v. *Mann,* 94 Tenn. 17, 27 S. W. 1015; *United States Co.* v. *Beckley,* 137 Ala. 119, 33 So. 934. It is even held in some jurisdictions that the parties to the contract can by stipulation determine the law which shall control, unless this is done for the purpose of evading a restriction or prohibition of the system of law which would naturally control: PAGE ON CONTRACTS, Vol. III, p. 2590; *Mittenthal* v. *Mascagni,* 183 Mass. 19, 66 N. E. 425; *Mut. Life Ins. Co.* v. *Hill,* 118 Fed. 708, 55 C. C. A. 536; *Smith* v. *Parsons,* 55 Minn. 520, 57 N. W. 311. But this principle is denied in other jurisdictions: *New York Life Ins. Co.* v. *Cravens,* 178 U. S. 389; *Washington Investment Assoc.* v. *Stanley,* 38 Oregon. 319, 63 Pac. 489. If the rule of the *lex celebrationis* invoked in the principal case, governed every aspect of a contract, it would seem that the sovereign states of the Union would be powerless to prevent the performance within their jurisdiction of acts forbidden by law, simply because the contract providing for their performance was valid where executed. But as Mr. Minor says in his CONFLICT OF LAWS, p. 419, "as the situs of the making of a contract furnishes the 'proper law' to govern all matters of validity connected with the making of the contract, so the situs of performance furnishes the law to determine the validity of the contract in respect to matters connected with its performance." This principle is supported by the undoubted weight of authority: *West. Union Tel. Co.* v. *May,* 83 Ala. 542, 4 So. 844; *Stebbins* v. *Leowulf,* 3 Cush. (Mass.) 137; *Brothers* v. *Church,* 14 R. I. 398, 51 Am. Rep. 410; *Hickox* v. *Elliot,* 27 Fed. 830; *Richardson* v. *Rowland,* 40 Conn. 565; *Dickinson* v. *Edwards,* 77 N. Y. 573, 33 Am. Rep. 671; *Greenwood* v. *Curtis,* 6 Mass. 358, 4 Am. Dec. 145; *Nickels* v. *Association,* 93 Va. 380, 25 S. E. 8. The opinion does not disclose whether the facts bore out defendant's claim of mutual intent to resell. If the evidence had disclosed such mutual intent, then although the contract was made in Minnesota and governed by the law of

that state as to form of execution, etc., as it contemplated performance in Iowa contrary to the law of Iowa it would seem that there would have been some ground for the Iowa court to have held the contract invalid.

SALES—RESCISSION FOR FRAUD—WHAT CONSTITUTES INTENTION NOT TO PAY.—Plaintiff bank sold one Leimer some commercial paper, which the latter had discounted by defendant bank. Leimer gave plaintiff his personal note in payment. At the time of purchase Leimer knew himself to be deeply insolvent. Plaintiff sought to rescind the sale, claiming that a purchase by one who has no reasonable expectation of being able to pay is tantamount to an intention not to pay, as a conclusion of law. *Held,* that the mere fact that the purchaser had no reasonable expectation of being able to pay, constitutes but a circumstance to be considered by the jury in determining as a matter of fact if the vendee at the time of purchase intended not to pay. *German National Bank of Ripon* v. *Princeton State Bank* (1906), — Wis. —, 107 N. W. Rep. 454.

The case is interesting because of the importance in commercial circles of the principle involved, and because of the conflict of authority concerning the point decided. It is almost universally held that concealment of insolvency at time of purchase is not of itself ground for rescission on the basis of fraud. *People* v. *Healy,* 128 Ill. 9, 20 N. E. 692; *Burchinell* v. *Hirsh,* 5 Colo. App. 500, 39 Pac. 352; *Illinois Leather Co.* v. *Flynn,* 108 Mich. 91, 65 N. W. 519; *Watson* v. *Silsby,* 166 Mass. 57, 43 N. E. 1117; *Davis* v. *Stewart* (C. C.), 8 Fed. 803; *Klopenstein* v. *Mulcahy,* 4 Nev. 296. The cases are also unanimous that a purchase by a vendee who at the time of purchase has the intention not to pay can be rescinded by the vendor on the basis of fraud: *Maxwell* v. *Brown Shoe Co.,* 114 Ala. 304, 21 So. 1009; *Donaldson* v. *Farewell,* 93 U. S. 631; *Thompson* v. *Rose,* 16 Conn. 71; *Stewart* v. *Emerson,* 52 N. H. 301. In Pennsylvania, however, such intention is not sufficient, unless accompanied by some artifice. *Backentoss* v. *Speicher,* 31 Pa. 324. The conflict in the cases centers around the significance to be attached to the finding as a matter of fact that the vendee at the time of purchase had no reasonable expectation of being able to pay. On this point the weight of authority seems to be with the decision in the principal case, to the effect that such a finding is merely a circumstance to be considered by the jury in determining the real intention of the vendee: *Burchinell* v. *Hirsh,* 5 Colo. App. 500, 39 Pac. 352; *Watson* v. *Silsby,* 166 Mass. 57, 43 N. E. 1117; *Manheimer* v. *Harrington,* 20 Mo. App. 297; *Dalton* v. *Thurston,* 15 R. I. 418, 7 Atl. 112; *Biggs* v. *Barry,* 2 Curt. 259; *Illinois Leather Co.* v. *Flynn,* 108 Mich. 91, 65 N. W. 519; *Morrill* v. *Blackman,* 42 Conn. 324; *Stewart* v. *Emerson,* 52 N. H. 301; *Gavin* v. *Armistead,* 57 Ark. 574, 22 S. W. 431. In a few jurisdictions, notably in some of the southern states, it is held as a conclusion of law, that an absence of reasonable expectation of being able to pay is equivalent to an intention not to pay: *Maxwell* v. *Brown Shoe Co.,* 114 Ala. 304, 21 So. 1009; *McKensie* v. *Rothschild,* 119 Ala. 419, 24 So. 716; *Davis* v. *Stewart* (C. C.), 8 Fed. 803; *Powell* v. *Bradlee,* 9 Gill. and J. 220; *Pike* v. *Equitable Nat. Bank,* 2 Ohio Dec. 283, 1 Ohio N. P. 323; *Klein* v. *Rector,* 57 Miss. 538. In several cases it is laid